

April Agro Industries, Inc., Agro Management Corporation, Agro Processing and Consultant International Corporation and Puerto Rico Labor Relations Board, Union Insular de Trabajadores Industriales y Construcciones Electricas, Federacion de Empleados de Comercio y Ramas Anexas de Puerto Rico, Inc., Sindicato de Obreros Unidos del Sur de Puerto Rico. Case AO-244

26 August 1982

ADVISORY OPINION

This petition for advisory opinion, with exhibits attached, was filed on 31 January 1983 by April Agro Industries, Inc., Agro Management Corporation, and Agro Processing and Consultant International Corporation (Petitioners), pursuant to Sections 102.98 and 102.99 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, for a determination whether the Board would assert jurisdiction over Petitioners' employees. Subsequently, Petitioners filed a brief in support of the petition.

In pertinent part, the petition, with exhibits and brief, alleges:

1. There is pending before the Puerto Rico Labor Relations Board, herein called the Puerto Rico Board, a petition for representation filed by Union Insular de Trabajadores Industriales y Construcciones Electricas, herein called the Union, docket number P:3520, claiming that a controversy concerning representation exists as to Petitioners' employees. Federacion de Empleados de Comercio y Ramas Anexas de Puerto Rico and Sindicato de Obreros Unidos del Sur de Puerto Rico have been granted permission by the Puerto Rico Board to intervene.

2. April Agro Industries, Inc., is a holding and administrative company of Agro Management Corporation and Agro Processing and Consultant International Corporation, and owns shares in these corporations. Agro Processing processes the vegetables grown on three farms administered by Agro Management. The farms do not belong to either of these corporations, but are subject to a lease agreement. The operation conducted by Agro Management centers upon a specialized technique known as "drip-irrigation system" to obtain agricultural production from arid and semi-arid land. A considerable number of foreign specialized personnel is

used in the process. Agro Processing, at its plant, cleans, processes, packs, and prepares the vegetables for export. The cost of its machinery is approximately \$650,000, and its gross volume of business is in excess of \$1 million during a representative 12-month period; a substantial percentage of the processed products are sold in interstate and foreign commerce; and a substantial number of purchases made by Petitioners are from outside Puerto Rico. During the last 12 months, Petitioners have directly exported to points and places outside Puerto Rico goods valued in excess of \$50,000, and, during this same period, Petitioners have directly imported to points and places inside Puerto Rico goods valued in excess of \$50,000. The packing operation is not located on any of the farms that are cultivated by Agro Management; it is alleged that its purpose is to increase the value of the products for export, and its functions are not a necessary incident to farming and/or agriculture.

3. The above commerce data has been neither admitted nor denied by the other parties. The Puerto Rico Board has made a finding that "April Agro Industries, Inc., is an enterprise engaged in the planting and harvesting of vegetables in Santa Isabel, Puerto Rico, and uses in its operation the services of *employees*. Therefore, it is an employer within the meaning of Article 2(2) of the Puerto Rico Labor Relations Board."

4. There is no representation or unfair labor practice proceeding involving this labor dispute pending before this Board.

5. Although all parties were served with a copy of the petition for advisory opinion, none has filed a response as permitted by the Board's Rules and Regulations.

The Board has duly considered the allegations of the petition, exhibits, and supporting brief. The Board's advisory opinion proceedings are designed primarily to determine questions of jurisdiction by application of the Board's dollar volume standards to the "commerce" operations of an employer.¹ The basic issue presented here is whether Petitioners' employees are agricultural laborers and, therefore, not "employees" within the meaning of Section 2(3) of the National Labor Relations Act. As this issue is one concerning fact questions which

¹ *Encinitas Floral Co. Robert R. Hall, Inc., H-M Flowers, Inc., and Mantec Co.*, 221 NLRB 1118 (1975).

have no clear-cut resolution, the determination sought by Petitioners, that their employees are not "employees" under Section 2(3) of the Act, does not fall within the intent of the Board's advisory opinion rules. Accordingly, we are dismissing the petition herein.²

² *Ibid.*

Accordingly, it is hereby ordered that, for the reasons set forth above, the petition for an advisory opinion be, and it hereby is, dismissed.³

³ In view of the reason for our dismissal of the petition for advisory opinion, we find it unnecessary to reach the issue whether Petitioners should be considered as joint employers.